

SECOND REGULAR SESSION

SENATE BILL NO. 1310

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR GROSS.

Read 1st time February 26, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4713S.011

AN ACT

To repeal sections 327.011, 327.111, 327.201, 327.291, 327.441, 327.633 and 621.045, RSMo, and to enact in lieu thereof six new sections relating to architects, professional engineers, and land surveyors, with a penalty provision.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 327.011, 327.111, 327.201, 327.291, 327.441, 327.633, and 621.045, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 327.011, 327.076, 327.077, 327.078, 327.441, and 621.045 to read as follows:

327.011. As used in this chapter, the following words and terms shall have the meanings indicated:

(1) "Accredited degree program from a school of architecture", a degree from any school or other institution which teaches architecture and whose curricula for the degree in question have been, at the time in question, certified as accredited by the National Architectural Accrediting Board;

(2) "Accredited school of landscape architecture", any school or other institution which teaches landscape architecture and whose curricula on the subjects in question are or have been at the times in question certified as accredited by the Landscape Architecture Accreditation Board of the American Society of Landscape Architects;

(3) "Accredited school of engineering", any school or other institution which teaches engineering and whose curricula on the subjects in question are or have been, at the time in question certified as accredited by the engineering accreditation commission of the accreditation board for engineering and technology or its successor organization;

(4) "Architect", any person authorized pursuant to the provisions of this chapter to practice architecture in Missouri, as the practice of architecture is defined in section 327.091;

(5) "Board", the Missouri board for architects, professional engineers, professional

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

land surveyors and landscape architects;

(6) "Corporation", any general business corporation, professional corporation or limited liability company;

(7) "Department", the department of economic development;

(8) "Division", the division of professional registration in the department of economic development;

(9) "Landscape architect", any person licensed pursuant to the provisions of sections 327.600 to 327.635 who is qualified to practice landscape architecture by reason of special knowledge and the use of biological, physical, mathematical and social sciences and the principles and methods of analysis and design of the land, has demonstrated knowledge and ability in such areas, and has been duly licensed as a landscape architect by the board on the basis of professional education, examination and experience in landscape architecture;

(10) **"Licensee", a person licensed to practice any profession regulated under this chapter or a corporation authorized to practice any such profession;**

(11) "Partnership", any partnership or limited liability partnership;

[(11)] (12) "Person", any person, corporation, firm, partnership, association or other entity;

[(12)] (13) "Professional engineer", any person authorized pursuant to the provisions of this chapter to practice as a professional engineer in Missouri, as the practice of engineering is defined in section 327.181;

[(13)] (14) "Professional land surveyor", any person authorized pursuant to the provisions of this chapter to practice as a professional land surveyor in Missouri as the practice of land surveying is defined in section 327.272.

327.076. 1. Any person who practices architecture, engineering, land surveying, or landscape architecture, as defined in sections 327.011 to 327.635, or who holds himself or herself out as able to practice such profession and who is not the holder of a currently valid license or certificate of authority in Missouri, and who is not exempt from holding such a license or certificate, is guilty of a class A misdemeanor.

2. The board may cause a complaint to be filed with the administrative hearing commission, as provided in chapter 621, RSMo, against any unlicensed person for any one or any combination of the following causes:

(1) Engages in or offers to render or engage in the practice of architecture, professional engineering, land surveying, or landscape architecture;

(2) Uses or employs titles defined and protected by this chapter, or implies authorization to provide or offer professional services, or otherwise uses or advertises any title, word, figure, sign, card, advertisement, or other symbol or description tending to convey the impression that the person is licensed or holds

a certificate of authority to practice architecture, professional engineering, land surveying, or landscape architecture;

(3) Presents or attempts to use another person's license, seal, or certificate of authority as his or her own;

(4) Attempts to use an expired, suspended, revoked, or nonexistent license or certificate of authority;

(5) Gives false or forged evidence of any kind to the board or any member of the board in obtaining or attempting to obtain a certificate of licensure in this state or any other state or jurisdiction;

(6) Knowingly aids or abets an unlicensed or unauthorized person who engages in any prohibited activity identified in this subsection;

(7) Violates any provision of the code of professional conduct or other rule adopted by the board;

(8) Violates any provision of subsection 2 of section 327.441.

3. When reviewing complaints against unlicensed persons, the board may initiate an investigation and take all measures necessary to find the facts of any potential violation, including issuing subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce the subpoena.

4. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds provided in subsection 2 of this section for disciplinary action are met, the board may, either singularly or in combination with other provisions of this chapter, impose a civil penalty as provided for in section 327.077 against the person named in the complaint.

327.077. 1. In disciplinary actions against licensed or unlicensed persons, the board may issue an order imposing a civil penalty.

2. A civil penalty imposed under this section shall not exceed five thousand dollars for each offense. Each day of a continued violation constitutes a separate offense, with a maximum penalty of twenty-five thousand dollars. In determining the amount of penalty to be imposed, the board may consider any of the following:

(1) Whether the amount imposed will be a substantial deterrent to the violation;

(2) The circumstances leading to the violation;

(3) The severity of the violation and the risk of harm to the public;

(4) The economic benefits gained by the violator as a result of noncompliance;

(5) The interest of the public.

3. Any final order imposing a civil penalty is subject to judicial review upon the filing of a petition under section 536.100, RSMo, by any person subject to the penalty.

4. Payment of a civil penalty shall be made within sixty days of filing the order, or if the order is stayed pending an appeal within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs and a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

5. An action to enforce an order under this section may be joined with an action for an injunction.

6. Any offer of settlement to resolve a civil penalty under this section shall be in writing, state that an action for imposition of a civil penalty may be initiated by the attorney general representing the board under this section, and identify any dollar amount as an offer of settlement which shall be negotiated in good faith through conference, conciliation, and persuasion.

7. Failure to pay a civil penalty by any person licensed under this chapter shall be grounds for refusing to renew a license or certificate of authority.

8. Penalties collected under this section shall be handled in accordance with section 7 of article IX of the Missouri Constitution and shall be deposited in the state general revenue fund. Such penalties shall not be considered a charitable contribution for tax purposes.

327.078. 1. In its determination that a licensee or nonlicensee has violated this chapter or a rule promulgated under this chapter, the board may assess the licensee or nonlicensee with its reasonable costs and expenses incurred in conducting the investigation and administrative hearing.

2. All moneys collected under this section shall be deposited in the fund established in section 327.081 and shall be used by the board to defray its expenses in connection with disciplinary investigations and hearings. Notwithstanding the provisions of section 327.081, such moneys may be expended without legislative appropriation.

327.441. 1. The board may refuse to issue any license or certificate of authority required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license or certificate of authority required by this chapter or any person who has failed to renew or has surrendered such person's license or certificate of authority, for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any license or certificate of authority issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

(7) Impersonation of any person holding a license or certificate of authority, or allowing any person to use his or her license or certificate of authority, or diploma from any school;

(8) Disciplinary action against the holder of a license or a certificate of authority, or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged incapacitated or disabled by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not licensed and currently eligible to practice pursuant to this chapter;

(11) Issuance of a professional license or a certificate of authority based upon a material mistake of fact;

(12) Failure to display a valid license or certificate of authority if so required by this chapter or any rule promulgated pursuant to this chapter;

(13) Violation of any professional trust or confidence;

(14) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, **or order a civil penalty pursuant to section 327.077**, or revoke the license or certificate of authority of the person named in the complaint.

621.045. 1. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in those cases when, under the law, a license issued by any of the following agencies may be revoked or suspended or when the licensee may be placed on probation or when an agency refuses to permit an applicant to be examined upon his qualifications or refuses to issue or renew a license of an applicant who has passed an examination for licensure or who possesses the qualifications for licensure without examination:

Missouri State Board of Accountancy

Missouri Board of Registration for Architects, Professional Engineers and Land Surveyors

Board of Barber Examiners

Board of Cosmetology

Board of Chiropody and Podiatry

Board of Chiropractic Examiners

Missouri Dental Board

Board of Embalmers and Funeral Directors

Board of Registration for the Healing Arts

Board of Nursing

Board of Optometry

Board of Pharmacy

Missouri Real Estate Commission

Missouri Veterinary Medical Board

Supervisor of Liquor Control

Department of Health and Senior Services

Department of Insurance

Department of Mental Health

2. If in the future there are created by law any new or additional administrative agencies which have the power to issue, revoke, suspend, or place on probation any license, then those agencies are under the provisions of this law.

3. The administrative hearing commission is authorized to conduct hearings and make findings of fact and conclusions of law in those cases brought by the Missouri Board of Registration for Architects, Professional Engineers and Land Surveyors against unlicensed persons pursuant to section 327.076, RSMo.

4. Notwithstanding any other provision of this section to the contrary, after August 28, 1995, in order to encourage settlement of disputes between any agency described in subsection 1 of this section and its licensees, any such agency shall:

(1) Provide the licensee with a written description of the specific conduct for which discipline is sought and a citation to the law and rules allegedly violated, together with copies of any documents which are the basis thereof, or file a contested case against the licensee, at least thirty days prior to offering the licensee a settlement proposal, and provide the licensee with an opportunity to respond to the allegations;

(2) If no contested case has been filed against the licensee, allow the licensee at least sixty days, from the date of mailing, during which to consider the agency's initial settlement offer and discuss the terms of such settlement offer with the agency;

(3) If no contested case has been filed against the licensee, advise the licensee that the licensee may, either at the time the settlement agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the administrative hearing commission for determination that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining the license of the licensee; and

(4) In any contact pursuant to this subsection by the agency or its counsel with a licensee who is not represented by counsel, advise the licensee that the licensee has the right to consult an attorney at the licensee's own expense.

[4.] 5. If the licensee desires review by the administrative hearing commission pursuant to subdivision (3) of subsection [3] 4 of this section at any time prior to the settlement becoming final, the licensee may rescind and withdraw from the settlement and any admissions of fact or law in the agreement shall be deemed withdrawn and not admissible for any purposes under the law against the licensee. Any settlement submitted to the administrative hearing commission shall not be effective and final unless and until findings of fact and conclusions of law are entered by the administrative hearing commission that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining the license of the licensee.

[5.] 6. As to a matter settled prior to August 28, 1995, by consent agreement or

agreed settlement, any party to a consent agreement or agreed settlement, other than a state agency, after having received written notice at their last known address known to the agency from the respective licensing agency of a person's rights under this section, shall have six months to file an action in the circuit court of Cole County contesting the authority of any agency described in subsection 1 of this section to enter into such consent agreement or agreed settlement. Any consent agreement or agreed settlement which is not invalidated by the court pursuant to this subsection shall be given full force and effect by all courts and agencies.

[327.111. Any person who practices architecture in Missouri as defined in section 327.091, who is not exempt pursuant to the provisions of section 327.101, or who is not the holder of a currently valid license or certificate of authority to practice architecture in Missouri, or who pretends or attempts to use as such person's own the license or certificate of authority or the seal of another architect or who affixes his or her or another's architect's seal on any plans, specifications, drawings, or reports which have not been prepared by such person or under such person's immediate personal supervision, is guilty of a class A misdemeanor.]

[327.201. Any person who practices professional engineering in Missouri as defined in section 327.181, who is not exempt pursuant to the provisions of section 327.191 and who is not the holder of a currently valid license or certificate of authority to practice professional engineering in Missouri, or who pretends or attempts to use as such person's own the license or certificate of authority or the seal of another professional engineer, or who affixes such person's or another professional engineer's seal on any plans, specifications, drawings or reports which have not been prepared by such person or under such person's immediate personal supervision is guilty of a class A misdemeanor.]

[327.291. Any person who practices as a professional land surveyor in Missouri as defined in section 327.272, who is not a holder of a currently valid license or certificate of authority to practice professional land surveying in Missouri, or who pretends or attempts to use as such person's own the license or certificate of authority or the seal of another professional land surveyor or who affixes such person's or another professional land surveyor's seal on any map, plat, survey or other document which has not been prepared by such person or under such person's immediate personal supervision is guilty of a class A misdemeanor.]

[327.633. Any person violating any of the provisions of sections 327.600 to 327.635 is deemed guilty of a class A misdemeanor.]

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